106TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPT. 106–321 Part 2

NAZI BENEFITS TERMINATION ACT OF 1999

OCTOBER 6, 1999.—Ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

REPORT

[To accompany H.R. 1788]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 1788) to deny Federal public benefits to individuals who participated in Nazi persecution, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nazi Benefits Termination Act of 1999".

SEC. 2. DENIAL OF FEDERAL PUBLIC BENEFITS TO NAZI PERSECUTORS.

(a) IN GENERAL.—Notwithstanding any other provision of law, an individual who is determined under this Act to have been a participant in Nazi persecution is not eligible for any Federal public benefit.

(b) DEFINITIONS.—In this Act:

(1) FEDERAL PUBLIC BENEFIT.—The term "Federal public benefit" shall have the meaning given such term by section 401(c)(1) (without regard to section 401(c)(2)) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, but shall not include any benefit described in section 401(b)(1) of such Act (and, for purposes of applying such section 401(b)(1), the term "alien" shall be considered to mean "individual").

(2) PARTICIPANT IN NAZI PERSECUTION.—The term "participant in Nazi persecution" means an individual who—

(A) if an alien, is shown by a preponderance of the evidence to fall within the class of persons who (if present within the United States) would be deportable under section 237(a)(4)(D) of the Immigration and Nationality Act or inadmissible under section 212(a)(3)(E)(i) of such Act; or

(B) if a citizen, is shown by a preponderance of the evidence—

(i) to have procured citizenship illegally or by concealment of a material fact or willful misrepresentation within the meaning of section 340(a) of the Immigration and Nationality Act; and

(ii) to have participated in Nazi persecution within the meaning of section 212(a)(3)(E) of the Immigration and Nationality Act.

SEC. 3. DETERMINATIONS.

(a) HEARING BY IMMIGRATION JUDGE.—If the Attorney General has reason to believe that an individual who has applied for or is receiving a Federal public benefit may have been a participant in Nazi persecution (within the meaning of section 2 of this Act), the Attorney General may provide an opportunity for a hearing on the record with respect to the matter. The Attorney General may delegate the conduct of the hearing to an immigration judge appointed by the Attorney General under section 101(b)(4) of the Immigration and Nationality Act.

(b) PROCEDURE.—

(1) RIGHT OF RESPONDENTS TO APPEAR.—

(A) CITIZENS, PERMANENT RESIDENT ALIENS, AND PERSONS PRESENT IN THE UNITED STATES.—At a hearing under this section, each respondent may appear in person if the respondent is a United States citizen, a permanent resident alien, or present within the United States.

(B) OTHERS.—A respondent who is not a citizen, a permanent resident alien, or present within the United States may appear by video conference. A respondent who was present in the United States when the proceeding was initiated and who is no longer present in the United States at the time of hearing may appear by video conference.

(C) RULE OF INTERPRETATION.—This Act shall not be construed to permit the return to the United States of an individual who is inadmissible under section 212(a)(3)(E) of the Immigration and Nationality Act.

(D) APPLICATION OF RULES TO OTHER PROCEEDINGS.—The rules described in this paragraph concerning the right of a respondent to appear shall apply to any other hearing, review, conference, or proceeding of any sort in which a determination of an immigration judge or ineligibility of benefits pursuant to this Act is an issue.

(2) OTHER RIGHTS OF RESPONDENTS.—At a hearing under this section, each respondent may be represented by counsel (but at no expense to the Federal Government), present evidence, cross-examine witnesses, and obtain the issuance of subpoenas for the attendance of witnesses and presentation of evidence.

(3) RULES OF EVIDENCE.—Unless otherwise provided in this Act, rules regarding the presentation of evidence in the hearing shall apply in the same manner in which such rules would apply in a removal proceeding before a United States immigration judge under section 240 of the Immigration and Nationality Act.

(4) STAY OF PROCEEDINGS.—Hearings brought under this section may be stayed pending resolution of other proceedings or pending appeal only upon the joint request of the parties.

(c) HEARINGS, FINDINGS AND CONCLUSIONS, AND ORDER.—

(1) FINDINGS AND CONCLUSIONS.—Within 60 days after the end of a hearing conducted under this section, the immigration judge shall make findings of fact and conclusions of law with respect to whether the respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act).

(2) ORDER.—

(A) FINDING THAT RESPONDENT HAS BEEN A PARTICIPANT IN NAZI PERSECUTION.—If the immigration judge finds, by a preponderance of the evidence, that the respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act), the immigration judge shall promptly

issue an order declaring the respondent to be ineligible for any Federal public benefit, and prohibiting any person from providing such a benefit, directly or indirectly, to the respondent, and shall transmit a copy of the order to any governmental entity or person known to be so providing such a benefit and to any governmental entity or person known to have received an application for benefits that has not been finally adjudicated.

(B) FINDING THAT RESPONDENT HAS NOT BEEN A PARTICIPANT IN NAZI PERSECUTION.—If the immigration judge finds that there is insufficient evidence for a finding under subparagraph (A) that a respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act), the immigration judge shall issue an order dismissing the proceeding.

(C) EFFECTIVE DATE; LIMITATION OF LIABILITY.—

(i) EFFECTIVE DATE.—An order issued pursuant to subparagraph (A) shall be effective on the date of issuance.

(ii) LIMITATION OF LIABILITY.—Notwithstanding clause (i), a person or entity shall not be found to have provided a benefit to an individual in violation of this Act until the person or entity has received actual notice of the issuance of an order under subparagraph (A) with respect to the individual and has had a reasonable opportunity to comply with the order.

(d) REVIEW BY ATTORNEY GENERAL; SERVICE OF FINAL ORDER.—

(1) REVIEW BY ATTORNEY GENERAL.—The Attorney General may, in her discretion, review any finding or conclusion made, or order issued, under subsection (c), and shall initiate any review not later than 30 days after the finding or conclusion is so made, or order is so issued.

(2) SERVICE OF FINAL ORDER.—The Attorney General shall cause the findings of fact and conclusions of law made with respect to any final order issued under this section, together with a copy of the order, to be served on the respondent involved.

(3) EFFECTIVE DATE OF FINAL ORDER.—If the Attorney General does not initiate the review provided for in paragraph (1), any order, finding, or conclusion under subsection (c) shall become final upon the expiration of 30 days after the finding, conclusion, or order is so issued. If the Attorney General does initiate the review provided for in paragraph (1), any order, finding, or conclusion shall become final either upon the issuance of a decision by the Attorney General or upon expiration of 90 days after the order, finding, or conclusion under subsection (c) is issued, whichever is earlier.

(e) JUDICIAL REVIEW.—Any party aggrieved by a final order issued under this section may obtain a review of the order by the United States Court of Appeals for the Federal Circuit, by filing a petition for such review not later than 30 days after the order becomes final, or completion of any review by the Attorney General, whichever is later.

(f) ISSUE AND CLAIM PRECLUSION.—In any administrative or judicial proceeding under this Act, the ordinary rules of issue preclusion and claim preclusion shall apply.

SEC. 4. JURISDICTION OF UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT OVER APPEALS UNDER THIS ACT.

Section 1295(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting "; and";

(3) by adding at the end the following:

"(15) of an appeal from a final order issued under the Nazi Benefits Termination Act of 1999.".

I. BACKGROUND AND NEED FOR LEGISLATION

H.R. 1788, the "Nazi Benefits Termination Act of 1999" would render individuals who are determined to have been participants in Nazi persecution ineligible for Federal public benefits. Under current law, Federal benefits received by an individual determined to have assisted the Nazi government of Germany in persecution during the Second World War (hereinafter referred to as "Nazi persecutors") could be terminated upon the issuance of a final order of deportation. Often that process takes years. However, if Nazi persecutors leave the United States voluntarily, prior to the initiation

of a deportation proceeding, they can continue collecting Federal public benefits in certain countries. This loophole in the law prevents the Federal Government from terminating the benefits of those Nazi persecutors who live abroad.

According to the records of the Office of Special Investigations at the Department of Justice (OSI) there are currently seven individuals who have been accused by the Department of Justice as having participated in Nazi persecutions, who live abroad and receive Social Security benefits. Together, these seven individuals have collected approximately $700,000 in Social Security benefits since their departure from the United States. Records also supplied by OSI disclose that over the past three decades, a total of 45 individuals accused of being Nazi persecutors have collected Social Security benefits. The Office of Special Investigations in the Department of Justice is currently pursuing hundreds of additional individuals believed to be Nazi persecutors who are still living in the United States.

H.R. 1788 would authorize the termination of Federal public benefits to a Nazi persecutor apart from the deportation or denaturalization process. The bill would establish a procedure to determine whether a Federal benefit recipient is also a Nazi persecutor. If an individual is found in a benefits revocation proceeding to have been a Nazi persecutor, an immigration judge (or the Attorney General) would be required to issue an order prohibiting that individual from either applying for or receiving Federal public benefits.

II. Legislative Hearings and Committee Actions

H.R. 1788 was introduced by Representative Bob Franks on May 13, 1999, and was referred to the Committee on the Judiciary, and to the Committee on Government Reform. On July 21, 1999, the Subcommittee on Government Management, Information, and Technology, of the Committee on Government Reform, met in open session and ordered H.R. 1788 favorably reported by voice vote. On September 30, 1999, the Committee on Government Reform considered the bill and ordered it favorably reported by voice vote, as amended. The bill had already been approved by the Committee on the Judiciary and reported on September 14, 1999.

The amendment, in the nature of a substitute, offered by Government Management Subcommittee Chairman Stephen Horn made a number of technical and clarifying changes to the bill.

The amendment clarifies the definition of "Federal public benefit" in section 2 of the bill. In H.R. 1788, the definition of "Federal public benefit" is similar to its definition in section 401(c)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act").[1] That Act defines "Federal public benefit" as any grant, contract, loan, professional or commercial license, retirement, welfare, health, disability, public housing, postsecondary education, food assistance, unemployment, or any other similar benefit provided by an agency of the United States. However, the Act exempts certain contracts, licenses, or other benefits for an alien or nonimmigrant working or otherwise legally present in the

[1] 8 U.S.C. 161, Public Law 104–193.

United States. H.R. 1788 includes these categories in its definition of "Federal public benefit."

The definition of "participant in Nazi persecution" is amended, in section 2(b)(2)(A) of H.R. 1788, to include those who are eligible for deportation in addition to those who would be inadmissible into the United States by virtue of their participation in Nazi persecutions.

Section 3(b) of the bill is amended to clarify that a participant in Nazi persecution who leaves the United States while any benefits termination proceeding is pending will not be permitted to return. As introduced, the bill provides that a person who is present in the United States when the proceeding is initiated may appear in person, but a person who is not present when the proceeding is initiated may only appear by video conference. This amendment is designed to prevent accused Nazi persecutors from using a benefits termination hearing as a reason to re-enter the United States. The Department of Justice currently uses videoconference technology for hearings in circumstances where a judge is unavailable or where a party to the proceedings is at a remote or distant location.

Section 3(b)(2) is amended to clarify that an accused Nazi persecutor is not entitled to counsel at the expense of the Federal Government for proceedings initiated under this bill. Hearings to determine eligibility for Federal public benefits are civil in nature and, therefore, do not trigger a defendant's right to counsel at the expense of the Federal Government under the United States Constitution.

Section 3(b)(4) is added to the bill to clarify that benefits revocation proceedings can be suspended, pending the resolution of an appeal or other proceedings (including deportation or denaturalization proceedings), only upon the joint request of the parties to the benefits revocation proceeding.

Section 3(c)(2)(A) is amended to require that once an immigration judge has determined that an individual participated in Nazi persecutions, the immigration judge must transmit a copy of the order to any Government entity or person known to have received an application for benefits from that individual. This amendment clarifies that an immigration judge has the authority to transmit an order blocking Nazi persecutors from applying for Federal benefits as well as receiving them.

Section 3(d) of the bill authorizes the Attorney General to review, at the Attorney General's discretion, a decision made by an immigration judge and to complete the review not later than 30 days after the finding or conclusion is made. This amendment provides an additional 60 days to complete the review. The Attorney General would still be required to initiate the review not later than 30 days after the order is issued by an immigration judge. Any order shall become final either upon the issuance of a decision by the Attorney General or upon the expiration of 90 days after the order, finding, or conclusion, whichever is earlier. If the Attorney General does not initiate a review, any order issued by an immigration judge shall become final upon the expiration of 30 days after the finding, conclusion or order is issued.

III. Committee Hearings and Written Testimony

No hearings on H.R. 1788 were held by the Committee on Government Reform.

IV. Explanation of the Bill

SECTION 1. SHORT TITLE

Section 1 provides that H.R. 1788 may be cited as the "Nazi Benefits Termination Act of 1999."

SECTION 2. DENIAL OF FEDERAL PUBLIC BENEFITS TO NAZI PERSECUTORS

Section 2(a) provides that an individual, determined to have been a participant in Nazi persecution, is not eligible for any Federal public benefit.

Section 2(b) defines "Federal Public Benefit" and "Participant in Nazi Persecution" for purposes of this legislation.

"Federal Public Benefit" is defined by reference to section 401(c)(1), without regard to section 401(c)(2), of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193), which limits the eligibility of some aliens for certain Federal public benefits.

"Participant in Nazi Persecution" is defined by reference to sections 212(a)(3)(E) and 237(a)(4)(D) of the Immigration and Nationality Act of 1952, which renders certain participants in Nazi persecution or genocide inadmissible and deportable.

SECTION 3. DETERMINATIONS

Section 3 sets up the procedure for determining whether an individual, eligible to receive Federal benefits, was a participant in Nazi persecutions.

Section 3(a). Hearing by Immigration Judge. This section provides that if the Attorney General has reason to believe that an individual who has applied for or is receiving a Federal public benefit may have been a participant in Nazi persecution, the Attorney General may provide for a hearing on the matter. The Attorney General can delegate the conduct of the hearing to an immigration judge appointed under the Immigration and Nationality Act.

Section 3(b). Procedure. This section describes the procedure to be followed at hearings under this section. Section 3(b)(1)(A) grants the respondent the right to appear in person if they are a United States citizen, permanent resident alien, or present in the United States. Section 3(b)(1)(B) provides that respondents who are not citizens, permanent resident aliens or present in the United States may appear by videoconference. Respondents who were present in the United States when the proceeding was initiated but are no longer present at the time of the hearing may also appear by videoconference. Section 3(b)(1)(C) provides that the Act shall not be construed to permit the return to the United States of an individual who is inadmissible as a Nazi persecutor under the Immigration and Nationality Act. Section 3(b)(2) provides that at a hearing the respondent has the right to counsel (but at no expense to the Federal government), and the right to present evidence, cross-

examine witnesses, and obtain the compulsory attendance of witnesses and presentation of evidence. Section 3(b)(3) provides that the rules of evidence at a hearing shall be the same rules applicable to removal proceedings before immigration judges. Section 3(b)(4) provides that hearings may be stayed pending the resolution of other proceedings or pending appeal only upon the joint request of the parties.

Section 3(c). Hearings, Findings and Conclusions, and Order. Section 3(c)(1) provides that within 60 days following the end of a hearing, the judge shall make findings of fact and conclusions of law with respect to whether the respondent has been a participant in Nazi persecution. Section 3(c)(2)(A) provides that if the judge finds, by a preponderance of the evidence, that an individual has been a participant in Nazi persecution, the judge shall promptly issue an order declaring the respondent to be ineligible for any Federal benefit and shall prohibit any person from providing such benefit. The section also requires the order to be issued to any governmental entity or person known to have received an application for benefits by the respondent. Section 3(c)(2)(B) requires a judge to dismiss the proceedings if the judge determines that there is insufficient evidence for finding that a respondent has been a participant in Nazi persecution. Section 3(c)(2)(C) provides that an order cutting off Federal public benefits to a Nazi persecutor shall be effective on the date of issuance, but no person or entity shall be found to have provided benefits in violation of the Act unless they have received actual notice of the order and had a reasonable opportunity to comply.

Section 3(d). Review by the Attorney General; Service of Final Order. Section 3(d)(1) provides that the Attorney General may review any finding, conclusion, or order made by an immigration judge under the Act, and shall initiate a review no later than 30 days after the finding or order is issued. Section 3(d)(2) provides that when a final order is issued, the Attorney General shall cause the underlying findings of fact and conclusions of law, and a copy of the final order, to be served on the respondent involved. If the Attorney General does not initiate a review, any order, finding or conclusion shall become final upon the expiration of 30 days after the finding, conclusion or order is issued. If the Attorney General does initiate a review, any order, finding or conclusion shall become final either upon the issuance of a decision by the Attorney General or upon the expiration of 90 days after the order, finding or conclusion is issued, whichever is earlier.

Section 3(e). Judicial Review. This section provides that a party aggrieved by a final order under this section may appeal the decision to the United States Court of Appeals.

Section 3(f). Issue and Claim Preclusion. This section provides that the ordinary rules of issue and claim preclusion apply to any administrative or judicial proceedings under this Act.

SECTION 4. JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT OVER APPEALS UNDER THIS ACT

Section 4 makes a conforming change in the law to ensure that the United States Court of Appeals of the Federal Circuit has jurisdiction over appeals brought under Section 3(e).

V. Committee Oversight Findings

Pursuant to rule XIII, clause 3(c)(1) of the Rules of the House of Representatives, the results and findings of those oversight activities are incorporated in the recommendations found in the bill and in this report.

VI. Budget Analysis and Projections

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because the bill does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures.

VII. Cost Estimate of the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 6, 1999.

Hon. Dan Burton,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1788, the Nazi Benefits Termination Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathy Ruffing.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1788—Nazi Benefits Termination Act of 1999

H.R. 1788 would stiffen restrictions on payments of federal benefits to people who participated in Nazi persecution. Under current law, former Nazis are pursued by the Office of Special Investigations (OSI) in the Department of Justice and may ultimately be stripped of their legal immigrant or naturalized citizen status and made to leave the United States. At that time, they also lose eligibility for federal benefits. A handful of people, though, have short-circuited the OSI's investigation by leaving the United States in the midst of proceedings. Such people can then continue to collect Social Security (the only significant federal benefit that is sent to people living abroad). H.R. 1788 would permit the Attorney General to continue proceedings in such cases and allow respondents living overseas to participate by video conference. The bill would also clarify current law by directing that, because these are civil rather than criminal proceedings, the standard of proof required is a preponderance of the evidence; some of the circuit courts have demanded a higher standard.

CBO estimates that implementing H.R. 1788 would have no significant effect on the federal budget. Based on information from the Department of Justice. CBO expects the number of people effected, and hence the savings in Social Security, would be negligible. Effects on other benefit programs would be even tinier. Pay-as-you-

go procedures would apply to this bill, but CBO estimates that the effects would not be significant.

H.R. 1788 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Kathy Ruffing. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. Statement of Constitutional Authority

Clauses 1, 14 and 18 of Article I, Section 8 of the U.S. Constitution grants Congress the power to enact this law.

IX. Committee Recommendation

On Thursday, September 30, 1999, a quorum being present, the Committee on Government Reform ordered the bill, as amended, favorably reported to the House for consideration by voice vote.

X. Congressional Accountability Act; Public Law 104–1

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(B)(3) of the Congressional Accountability Act (P.L. 104–1).

XI. Unfunded Mandates Reform Act; Public Law 104–4, Section 423

The Committee finds that the legislation does not impose any Federal mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

XII. Federal Advisory Committee Act (5 U.S.C. App.) Section 5(b)

The Committee finds that the legislation does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1295 OF TITLE 28, UNITED STATES CODE

§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) * * *

* * * * * * *

(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; [and]

(14) of an appeal under section 523 of the Energy Policy and Conservation Act[.]*; and*

(15) of an appeal from a final order issued under the Nazi Benefits Termination Act of 1999.

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